(1)

Supreme Court, U.S.
FILED

001575 APR 11 2001

OFFICE OF THE CLERK

No. _____

In The

# Supreme Court of the United States

ABRAHAM NEE NTREH,

*Petitioner,*

v.

THE UNIVERSITY OF TEXAS, AT DALLAS,

*Respondent.*

**On Petition For Writ Of Certiorari To The Court Of Appeals Of Texas, Fifth District, At Dallas**

## PETITION FOR WRIT OF CERTIORARI, AND APPENDIX

ALAN B. RICH, ESQ.
*(Counsel of Record)*
BARON & BUDD, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219
(214) 521-3605

*Attorneys for the Petitioner*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

310

## QUESTION PRESENTED

Whether Petitioner's Fourteenth Amendment right to confront the State's witnesses in his case and testify and present evidence in his own behalf were violated, when the trial court denied his motion for continuance based on his involuntary absence from the United States.

## PARTIES TO THE PROCEEDING

1. Petitioner Abraham Nee Ntreh
   care of Alan B. Rich
   3102 Oak Lawn Avenue, Suite 1100
   Dallas, Texas 75219

2. Respondent University of Texas at Dallas

3. Counsel for Petitioner
   Alan B. Rich
   3102 Oak Lawn Avenue
   Suite 1100
   Dallas, Texas 75219
   (214) 525-3729

4. Counsel for Respondent
   Craig Carter
   Office of the Attorney General of Texas
   P.O. Box 12548
   Austin, Texas 78711
   (512) 463-2120

## TABLE OF CONTENTS


| | Page |
|---|---|
| Questions Presented | i |
| Parties to the Proceeding | iii |
| Table of Contents | iv |
| Table of Authorities | v |
| Opinions Below | 1 |
| Jurisdiction | 1 |
| Constitutional Provisions, Statutes, and Rules Involved | 1 |
| Statement of the Case | 1 |
| Reasons for Granting the Writ | 5 |
| Conclusion | 9 |

## TABLE OF AUTHORITIES

Page

CASES

*Board of Trustees of the University of Alabama v. Garrett*, ___ U.S. ___, No. 99-1240, ___ U.S. ___ (2001) ..... 5

*Ungar v. Sarafite*, 376 U.S. 575, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964) ..... 6, 7

*University of Texas at Dallas v. Ntreh*, 947 S.W.2d 202 (Tex.1997), *revg in part*, 936 S.W.2d 649 (Tex. App. – Dallas 1996) ..... 3

*Willner v. Committee on Character and Fitness*, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224 (1963) ..... 5

STATUTES

28 U.S.C. § 1254(1) ..... 1

8 CFR 243.2 (1997) ..... 3

## OPINIONS BELOW

The opinion of the Texas Court of Appeals is unpublished, and is appended as Appendix A.

## JURISDICTION

The Court of Appeals' opinion is dated August 7, 2000. Petitioner's timely Petition for Review to the Texas Supreme Court was overruled on January 11, 2001. This Petition is filed within 90 days of the Order of the Texas Supreme Court. This Court has jurisdiction over this Petition under 28 U.S.C. Section 1254(1).

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

Appended as Appendix B is the Fourteenth Amendment to the United States Constitution.

## STATEMENT OF THE CASE

### A. Background

Petitioner is a national of Ghana, and a lawful permanent resident of the United States. Petitioner was permanently expelled from the University of Texas at Dallas for alleged academic dishonesty. Petitioner claimed that the charge of academic dishonesty was a pretext for a racially motivated expulsion, which arose from Petitioner's challenge to the grade he was given in a class, and the

discriminatory basis on which the grades were given students in the class. In particular, among the eleven students in the class, seven white students with comparable work as Petitioner's and some with even lower performances received "A" grades. After the grade challenge and discrimination complaint, the University brought Petitioner before a disciplinary hearing and there, for the first time, accused him of plagiarizing a play. Petitioner claimed, however, that he informed his instructor and she agreed that he could use an already scripted play for the purpose of showing how such a play could be staged. Indeed, staging an already scripted play was an option the class was given for this project. Petitioner was a senior at the University of Texas at Dallas, had earned his Accounting Degree, and had taken this elective theater class in order to boost his grade point average. (Trial Exh. D-1, at 13; Rep. Rec. at 22).

It was also alleged that the treatment and punishment received by the Petitioner was more severe than that doled out to white students who were accused and punished for identical acts of alleged academic dishonesty; in that, white students who were accused of plagiarism were first informed of and given the opportunity to waive a disciplinary hearing by "accepting responsibility" (as in a "plea bargain"), instead of going forward with the formal hearing, which if lost, entailed a far more severe punishment than that received through the "plea bargain." As noted above, Petitioner only learned that he was being charged with plagiarism during the disciplinary hearing, where even assuming the plagiarism allegation was true (which it was not), he could not have

waived a hearing at that point in exchange for a lesser punishment.

After the expulsion and following several unsuccessful attempts to work out an amicable solution with the University, in May 1992 the Petitioner filed a discrimination and retaliation complaint with the United States Department of Education Office for Civil Rights ("OCR") against the University of Texas at Dallas ("UTD") officials regarding his diploma and his expulsion. In March 1993, OCR ruled in favor of UTD over the protests of the lead investigator; however, UTD officials then contacted several law enforcement agencies in the Dallas area to investigate Petitioner and his family, including the Immigration and Naturalization Service ("INS"), and the United States Department of Education Inspector General's Office in Dallas.

**B. Statement of the Proceedings Below**

On or about November 1993, Petitioner brought suit against UTD in Texas state court, thus beginning a Dickensian saga, part one of which resulted in two published opinions, *University of Texas at Dallas v. Ntreh*, 947 S.W.2d 202 (Tex.1997), *rev'g in part*, 936 S.W.2d 649 (Tex. App. – Dallas 1996), and part two of which was the deportation by the INS of the Petitioner and his wife, Marcia Witter (also a lawful permanent resident) from the United States to England in October 1997. The deportation, however, was clearly unlawful because it was had without a final order of deportation, as required by federal law, the United States Constitution, and the INS's own regulations. *See* 8 CFR 243.2 (1997). Neither the Petitioner nor

his wife has any criminal convictions either in the United States or abroad.[1]

On March 10, 1999, a motion for continuance in this suit was filed because of the Petitioner's involuntary absence. The motion was denied and trial went forward on March 15, 1999. Despite substantial evidence in the record below that the deportation proceedings were set in motion by the Respondent, ironically it is the Respondent that remains the only beneficiary of the Petitioner's absence from trial after the trial court's denial of the Petitioner's motion for continuance.

Not unexpectedly given Petitioner's absence, the trial judge found for the Respondent, and his appeals and petitions followed. Because (1) Petitioner's absence from trial was involuntary; (2) he was not able to confront the State's witnesses, and after hearing them testify to contrary facts, testify himself; and (3) the State was unable to articulate in the record any type of prejudice to it whatsoever if the trial were continued so that Petitioner could attend, Petitioner was denied his Fourteenth Amendment rights. The Petitioner has returned to the United States – but too late for justice to be done in his case – unless this Court acts.

---

[1] Shortly after this suit was filed, and apparently as the result of discussions between the various state and federal agencies and the University, Petitioner was charged with perjury regarding a Bill of Review proceeding which set aside a marriage annulment. After yet another saga through the legal system, the Texas Court of Appeals would eventually render a judgment of acquittal in Petitioner's favor. *Ntreh v. State*, 05-96-00725-CR (Tex. App. – Dallas, Dec. 7, 1998).

## REASONS FOR GRANTING THE WRIT

A civil litigant against the state has a valuable federal constitutional right to be present at his trial. *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 103-4, 83 S.Ct. 1175, 1180, 10 L.Ed.2d 224 (1963). *Willner* therefore teaches that confrontation of witnesses is guaranteed not only by the Sixth Amendment's Confrontation Clause, but is a matter of Fourteenth Amendment procedural due process of law. Since Petitioner had a federal constitutional right to be present at his trial and confront the witnesses against him, that right cannot be disregarded without justification.

Indeed, as litigation by and against states and their instrumentalities increase in number, especially in the state courts,[2] mapping the contours of the Fourteenth Amendment's right to confront the state's witnesses in civil cases will become increasingly important. The case at bar is a perfect example, and a perfect vehicle for this Court to begin the process of articulating the application and weighing of such rights. While this Court has in the past discussed the right of confrontation in civil cases involving the State, it has never analyzed the application of the right in actual, day to day trial practice – the level at which the right is exercised daily. The Petitioner does not argue that the right is absolute – no rights are. The right of confrontation must be applied by balancing it with all countervailing state interests. But, Petitioner does insist that at very least, the State must place *something* on

---

[2] *See, e.g., Board of Trustees of the University of Alabama v. Garrett*, No. 99-1240, ___U.S.___ (2001).

the scale to *be* balanced. Here, the Petitioner's constitutional rights were simply ignored. This Court should clarify this field, and remand to the lower courts to do a proper constitutional analysis.

In the criminal context, this Court has held that while continuances are traditionally within the discretion of the trial judge, "a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality. There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied." *Ungar v. Sarafite*, 376 U.S. 575, 589, 84 S.Ct. 841, 849-50, 11 L.Ed.2d 921 (1964) (citations omitted). Petitioner submits that under the facts of his case as discussed above, the trial court's and appellate court's failure to analyze this issue by balancing Petitioner's rights against any prejudice to the State if the continuance were granted, and in addition the trial court's failure to continue his case so that he could testify, present evidence in his own behalf, and confront the State's witnesses against him, all violated his Fourteenth Amendment due process rights under the United States Constitution.

Below, although the Texas Court of Appeals acknowledged the existence of Petitioner's right, it affirmed the judgment of the trial court in this regard simply and only because the Petitioner was fortunate enough to have *pro bono* counsel present at trial. That kind of analysis, while having the advantage of utter simplicity, does not respect

the import of the Fourteenth Amendment, and contravenes this Court's *Ungar* decision. Further, the Texas Court of Appeals' opinion contains no analysis of the rights in question. If Petitioner's right of confrontation was outweighed by the Respondent's rights, how was it outweighed and why, and by what rights? If the presence of counsel was alone sufficient to fulfill the confrontation right (contrary to this Court's precedents) how was that so, given the crucial testimony that had to be left unanswered? The Texas Court of Appeals did not answer any of these crucial analytical questions – perhaps because the record is bare of any facts whatsoever which outweigh Petitioner's right to be present at his own trial and to testify in his own behalf.

Under a proper Fourteenth Amendment confrontation right analysis, the "circumstances present" in this case are highly unusual and show that Petitioner's rights were violated. Certainly, putting a case to trial where a plaintiff himself was, due to no fault of his own, legally unable to attend his trial, is out of the ordinary. Exacerbating this situation is the inescapable conclusion that all of the important testimony in this particular case concerning historical facts were hotly contested – in common parlance, this was a classic "swearing match" – but the trial court's shunting aside of Petitioner's confrontation rights permitted only one side of the story to be told. In addition, as noted above, the Respondent at the very least participated in the deportation action that resulted in Petitioner's absence during the trial of his case. Furthermore, the Respondent never even attempted to put into the record facts from which any findings of prejudice

could be made had the continuance to allow the Petitioner's attendance been granted. Indeed there would have been none. The action was solely for equitable relief. An order awarding a diploma and modifying wrongful entries in an academic record was all the relief that was sought. There was no monetary relief earning prejudgment interest. All the Appellant's witnesses were within its own control, and none were *in extremis*. In short, the effect of denying the Petitioner his confrontation rights resulted in incurable prejudice to the Petitioner, while respecting his rights would not have injured the Respondent one iota.

To elaborate briefly on the prejudice to the Petitioner which resulted from the denial of the motion to continue, there were several critical issues of fact where the Respondent offered unrebutted testimony, which would have been thoroughly refuted by Petitioner had the continuance been granted and had he been able to confront witnesses against him and offer contrary testimony. The most important of these issues was Petitioner's testimony that (1) he fully informed his instructor that he was staging an existing work, a play written by another, and therefore since the instructor was aware the Petitioner was simply staging an existing work, the later trumped-up plagiarism charges would have been seen for what they are – clear pretext; (2) he was not informed of the plagiarism allegation until during the disciplinary hearing; (3) he was never presented with a "waiver" form to sign regarding the hearing (*i.e.*, given the opportunity to make a "plea bargain").

In sum, while Petitioner does not assert that his confrontation rights are absolute and not admitting of

exception, there is nothing present in the record which outweighs these rights. Perhaps if his absence from the jurisdiction was his "fault," a different case would be presented. Perhaps if the facts at issue were largely uncontested, a different case would be presented. If Petitioner's presence would have been disruptive to the dignity of the court, a different case would be presented. If the exercise of Petitioner's constitutional rights would have been unduly prejudicial to the rights of the Respondent, a different case would be presented. Here, the lower courts chose simply to ignore his rights rather than analyzing them under the correct constitutional rubric.

## CONCLUSION

This Court should grant the petition for writ of certiorari, and should remand to the Texas Court of Appeals so that the Court may employ to Petitioner's case the proper test for deciding the continuance issue in light of Petitioner's Fourteenth Amendment rights to confront witnesses and testify in his own behalf.

Respectfully Submitted,

ALAN B. RICH
*(Counsel of Record)*
BARON & BUDD, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219
(214) 521-3605
(214) 520-1181 [fax]

**AFFIRMED and Opinion Filed August 7, 2000.**

S
In The
Court of Appeals
Fifth District of Texas at Dallas

---

**No. 05-99-01165-CV**

---

**ABRAHAM NEE NTREH, Appellant**
V.
UNIVERSITY OF TEXAS AT DALLAS, Appellee

---

**On Appeal From The 192nd Judicial District Court**
Dallas County, Texas
Trial Court Cause No. 93-12099

---

OPINION

Before Justices Moseley and O'Neill[1]
Opinion By Justice Moseley

In the second appeal in this case, appellant, Abraham Nee Ntreh ("Ntreh"), complains of an adverse judgment by the trial court in favor of appellee, the University of Texas at Dallas ("UTD"), on his claims of discrimination based on race or national origin and due process violations. On appeal, Ntreh raises four issues: (1) the trial court abused its discretion by denying Ntreh's motion for continuance;

---

[1] Justice John Ovard participated in the original submission of this case. Since submission, Justice Ovard has retired. *See* Tex. R. App. P. 41.1(a) & (b).

(2) the trial court violated Ntreh's due process rights by trying his case without Ntreh being present; (3) UTD violated Ntreh's due process rights by failing to allow him to waive a disciplinary hearing; and (4) the evidence was factually insufficient to support the trial court's findings of fact concerning allegations of academic dishonesty. For the reasons set forth below, we affirm the judgment of the trial court.

**Background**

In 1991, Ntreh, a Ghanian national, was a legal resident alien and a student at UTD. During his senior year, Ntreh and his brother Joseph Ntreh ("Joseph") enrolled in the Nature of Theatrical Experience class taught by Ms. Coral Shafer ("Shafer"). To receive credit for the course, each student had to complete a final project consisting of either a research paper or a creative project. Options for the creative project included doing a performance of either already scripted material, or material written by the student, writing a script, or doing a design for a costume for a set. If the student chose to do a creative project, they were also required to write a two to three page paper placing the project within the context of the class. According to Shafer, Ntreh chose to do a creative project and write a script.

For his final project, Ntreh turned in a play entitled "A Return to Live" and the author of the play was designated as Abe Evan Nee, a name by which Ntreh is often referred. A two-page cover sheet was attached explaining the nature of the play. The language used in the cover sheet indicated that Ntreh wrote the play. Ntreh initially

received a "B" grade for his project. Feeling that he should have received an "A" instead of a "B," Ntreh spoke with Dr. Linda Williamson ("Williamson"), the College Master for the College of Arts and Sciences at UTD, about the discriminatory manner in which "A" and "B" grades were assigned.

After reviewing Ntreh's play, Shafer questioned the play's authenticity. Williamson and Priscilla Ann Beadle, the Vice President for Administration and Student Affairs, testified at trial that when they questioned Ntreh about his play, he told them the play was his original work. Williamson and Shafer decided to conduct research to determine if Ntreh had plagiarized an existing work. Shafer conducted research at the Dallas Public Library where she discovered a play entitled "Resurrection" by Richard Rive. Except for some minor details, Shafer discovered that Rive's "Resurrection" and Ntreh's "A Return to Live," were verbatim. UTD initiated a disciplinary proceeding against Ntreh for alleged plagiarism. As a result of the proceeding, Ntreh was given an "F" in the class and expelled from the University.

Ntreh sued UTD in November 1993 alleging: (1) Ntreh was denied the equal protection of the law and was denied due process (both brought under 42 U.S.C. §§ 1983); (2) UTD discriminated against Ntreh (a black man) based on race or national origin in violation of Texas Civil Practice & Remedies Code section 106.001(a)(6); and (3) breach of contract. UTD filed a plea to the jurisdiction based on sovereign immunity. On April 20, 1994, the trial court granted UTD's plea to the jurisdiction and dismissed the case concluding that UTD was immune from suit on all of Ntreh's claims. On appeal,

this Court concluded that the trial court correctly dismissed Ntreh's §§ 1983 claims. However, this Court further concluded that the trial court erred in dismissing Ntreh's claims for discrimination and breach of contract and remanded the case to the trial court. UTD appealed to the Texas Supreme Court concerning the remand of Ntreh's breach of contract claim. The supreme court concluded that the trial court properly dismissed Ntreh's breach of contract claim and modified this Court's judgment accordingly. Therefore, upon remand, the live cause of action was Ntreh's discrimination claim under section 106.001(a)(6) of the Texas Civil Practice & Remedies Code.

While this suit was pending on remand, on October 28, 1997, Ntreh and his wife were deported to England based on a conviction of perjury in an unrelated proceeding. On December 7, 1998, this Court reversed Ntreh's conviction for perjury and acquitted him of that charge. On March 10, 1999, while Ntreh remained in England, Ntreh filed a motion for continuance in the present suit because of his inability to appear at the trial due to his deportation. The trial court denied Ntreh's motion and the case was called for trial on March 15, 1999. On April 13, 1999, the trial court rendered a take nothing judgment against Ntreh. Ntreh brings this appeal.

## Discussion

### I. MOTION FOR CONTINUANCE

In his first issue, Ntreh contends that the trial court erred by not granting his motion for continuance because Ntreh had been deported and was, therefore, involuntarily out

of the country and could not attend and testify at his own trial.

The granting of a continuance rests within the sound discretion of the trial court. *See Humphrey v. Ahlschlager*, 778 S.W.2d 480, 482 (Tex. App. – Dallas 1989, no writ). Mere absence of a party does not automatically entitle him to a continuance. *See id.* at 483. A motion for continuance based on an absent party must contain some prognosis as to when or if the witness will ever be able to testify. *See id.* A motion for continuance based on the absence of testimony must be supported with an affidavit showing: (1) the testimony is material; (2) the materiality of the testimony; and (3) the movant's due diligence to procure such testimony. *See* Tex. R. Civ. P. 252. Ntreh's motion for continuance does not state when or if he will ever be available to testify. Furthermore, Ntreh's motion is not supported by an affidavit showing any of the requisite information regarding materiality of the testimony or due diligence in attempting to procure such testimony. Because Ntreh's motion fails to address the matters, the trial court did not abuse its discretion by not granting Ntreh's motion for continuance. *See Humphrey*, 778 S.W.2d at 483-84. We overrule Ntreh's first issue.

## II. DUE PROCESS AT TRIAL

In his second issue, Ntreh argues that he was denied due process of law when the trial court tried his case despite Ntreh's involuntary absence. Ntreh does not cite any authority for the proposition that when a civil trial proceeds despite the involuntarily [sic] absence of one of the parties at that trial, the party's due process rights have

been violated. While every litigant has a fundamental right guaranteed by the due process clause of the Federal Constitution to be present at every stage of trial, this right is not absolute in civil cases. *See Ford v. Carballo*, 577 F.2d 404, 406 (7th Cir. 1978); *In re Donna K.*, 518 N.Y.S.2d 289, 290 (N.Y. App. Div. 1987); *In re Rich*, 604 P.2d 1248, 1253 (Okla. 1979). Because Ntreh was represented by counsel at trial, we conclude that any due process rights regarding his presence at trial were not violated. *See Fillipon v. Albion Vein State Co.*, 250 U.S. 76, 81 (1919); *Leonard's of Plainfield, Inc. v. Dybas*, 31 A.2d 496, 497 (N.J. 1943) (citing *Fillipon*, 250 U.S. at 81). We overrule Ntreh's second issue.

## III. DUE PROCESS AT THE DISCIPLINARY HEARING

In his third issue, Ntreh argues that UTD denied him due process in the disciplinary hearing because he was not provided an instrument by which he could have admitted the charges against him. This Court has already adjudged this issue affirming the trial court's dismissal of Ntreh's due process claim based on sovereign immunity. *See Ntreh v. University of Tex. at Dallas*, 936 S.W.2d 649,652 (Tex. App. – Dallas 1996), *modified & affirmed on other grounds*, 947 S.W.2d 202 (Tex. 1997) (per curiam), *overruled on other grounds by Federal Sign v. Texas S. Univ.*, 951 S.W.2d 401 (Tex. 1997). In an appeal to the supreme court from that decision, the parties raised no point regarding this due process issue. *See University of Tex. at Dallas v. Ntreh*, 947 S.W.2d 202 (Tex. 1997) (per curiam). Therefore, any error regarding whether Ntreh's due process claim was properly dismissed based on sovereign immunity has been

waived. *See McKelvy v. Barber*, 381 S.W.2d 59, 64 (Tex. 1964); *Ex parte La Rocca*, 154 Tex. 618, 282 S.W.2d 700, 701 (1955). We overrule Ntreh's third issue.

## IV. FACTUAL SUFFICIENCY OF THE EVIDENCE

In his fourth issue, Ntreh argues that the evidence was factually insufficient to support the trial court's findings of fact five through seventeen.[2]

---

[2] In those findings were as follows:

5. The teacher, Carol Shafer, required a final project from all students, in which they were given a choice: 1) Perform a play, either their own work or someone else's; 2) write a script; or 3) design a costume or set.

6. Plaintiff chose the option of writing a script.

7. Plaintiff turned in a play for his final project, entitled "A Return to Live." In his introduction, plaintiff describes how he developed the ideas to write this play. Plaintiff described a friend's aunt's funeral that he attended as the inspiration for writing the play. Plaintiff detailed his character development, and named his characters. Plaintiff signed the play, and presented it as his final project.

8. Shafer subsequently discovered a play entitled "Resurrection," by a professional playwright named Richard Rive.

9. In comparison, plaintiff's "A Return to Live," and Rive's "Resurrection," were identical except that the name of one character, Mavis, was changed to Martha by plaintiff. Plaintiff failed to cite "Resurrection" at all in his project.

*A. Standard of Review*

A trial court's findings of fact have the same force and effect as a jury's verdict on special issues. *See Gregory v. Sunbelt Sav., F.S.B.*, 835 S.W.2d 155, 158 (Tex. App. – Dallas 1992, writ denied); *City of Clute v. City of Lake*

---

10. Plaintiff failed to prove that he had developed his own script, and accordingly failed to prove that he was qualified to be academically promoted under the rules of the class.

11. Plaintiff was given an "F" in AP 3334, and expelled from school for plagiarism. In the academic years 1990-1992, plaintiff was only one of four students who were accused of plagiarism. All were disciplined, including one white American student who also received an "F" in her class.

12. Three UT-Dallas students other than plaintiff have been expelled from school for plagiarism, including a white American student. To the extent that non-black, or non-foreign students have been accused of plagiarism but disciplined less severely than plagiarism [sic], those students all admitted their offense, where plaintiff denied his guilt throughout a full evidentiary hearing.

13. Plaintiff failed to prove that he was treated differently in the terms and conditions of his educational advancement than other non-black, non-foreign students who had also been accused of plagiarism.

14. UT-Dallas produced evidence that plaintiff was expelled because he had plagiarized a playscript, and continued to lie about it after he was confronted by his teacher and faculty-members. UT-Dallas produced evidence that plaintiff only admitted using Rive's play after Shafer found the play in the library.

15. Plaintiff failed to prove that Shafer instructed her students that it was acceptable to copy someone

*Jackson*, 559 S.W.2d 391, 395 (Tex. Civ. App. – Houston [14th Dist.] 1977, writ ref'd n.r.e.). We review the trial court's findings of fact under the same standards that are applied in reviewing the evidence supporting a jury's answers. *See Zieben v. Platt*, 786 S.W.2d 797, 799 (Tex. App. – Houston [14th Dist.] 1990, no writ).

In reviewing a factual sufficiency issue, we consider all of the evidence. A finding will be set aside only if the evidence is so weak or the finding is so against the great weight and preponderance of the evidence that it is clearly wrong and manifestly unjust. *See Gregory*, 835 S.W.2d at 158.

*B. Findings Regarding Plagiarism (Findings of Fact 5-10)*

There is evidence in the record that as his final project in the class, Ntreh turned in a play entitled "A Return to Live; he designated the author of the play as Abe Evan Nee, a moniker by which he was known. In a two-page cover sheet attached to his play, Ntreh described in detail how he had been inspired to write the play because of a personal experience he had had at a friend's aunt's funeral, how he developed the characters and dialogue, and how he envisioned the theatrical setting, scenery, lighting, and sound. The concluding paragraph in his

---

else's play word-for-word, and submit it as a "final project," worthy of a grade.

16. Plaintiff failed to prove that UT-Dallas' [sic] allegations of plagiarism were a pretext for race or national origin discrimination.

cover sheet stated that, "[m]ost of the things we studied in class helped me considerably to explore the components of *my story* in relation to the components of *my play*. Things we studied also helped me in considering what was essential in *my story* to meet *my objective* in the play." (Emphasis added). Beadle testified that Ntreh represented to her that he had written all of the two-page cover sheet and play he turned in as his final project. Ms. Veronica Davis ("Davis"), a former attorney with the Department of Education, also testified that Ntreh wrote the two-page cover sheet. There is also evidence and testimony in the record that Ntreh represented to Shafer, Beadle, and Williamson that the play was his own work.

Williamson testified that both she and Shafer questioned whether Ntreh's play was his original work because of the professional quality of the play, a quality that is not customary for student works. Williamson testified that she and Shafer both conducted research in various libraries to determine if a play existed that Ntreh could have plagiarized. Williamson further stated that based on the language used in the play, Shafer narrowed her search to Afro-American anthologies, which eventually led to Shafer's discovery of a previously published play entitled "Resurrection" by Richard Rives. Except for a few minor changes, Ntreh's play was the verbatim script of "Resurrection".

In her testimony, Williamson explained the search for the "Resurrection":

---

17. Plaintiff produced no evidence of race or national origin discrimination other than his subjective belief and allegations.

Q. How long did it take [Shafer] to locate this Rive play? How many hours did she put into it?

A. I don't know the total number of hours, I know that she went solely for the – she went to the library looking for the play.

Q. Looking for that particular play?

A. Looking for any play that looked like it might be like –

Q. How many plays are in the library?

A. I don't know.

Q. Probably thousands. Is that accurate?

A. I would not think so.

Q. You would think there is less than a thousand plays in the UTD library?

A. She wasn't at the UTD library, she was at the Dallas County – Dallas Public Library.

Q. So it's your view that there is probably less than a thousand plays at the Dallas library?

A. Plays of this nature. I mean, when you are a professional you can read a play and get a sense of language, a sense of place and a sense of what the action is, and you even have a category to go to. Obviously, having his work, you wouldn't be looking under comedies you would be looking under – you would be looking for a *needle in a haystack.*

Q. Well, I mean, that's kind of what I am thinking.

A. Uh-huh.

Q. And I am trying to figure out how this needle was located in just a few hours, what – whether you had some kind of –

A. I had an idea –

Q. – informant who told you what the play was, or maybe Mr. Ntreh told you what the play was.

A. The – I am not aware of any of this other than the fact that the play was found.

Q. Did you think it was at all unusual that the play got found like that?

A. Yes. But I would have, and did do some searching on my own.

Q. And you found it as well, independently?

A. No.

(Emphasis added.)

Ntreh argues that Williamson's testimony that finding the "Resurrection" was like looking for a "needle in a haystack," supports his argument that Shafer's expediency in finding this "needle in a haystack" is implausible without having prior knowledge of the play's existence. Ntreh argues that this is further supported by Joseph's testimony that Ntreh had informed Shafer that he was staging an *existing work*. Ntreh contends that, because the evidence demonstrates that he represented to Shafer that he was using an existing work for his project, the evidence does not support a finding of plagiarism.

UTD argues that the phrase "a needle in a haystack" meant that "conducting a search for the play in a library would have been like looking for a needle in a haystack without narrowing the search to a particular category of plays."

Having reviewed all of the evidence, including the evidence noted above, we conclude that the trial court's findings of fact five through ten are not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

C. *Findings Regarding Discrimination (Findings of Fact 11-19)*

UTD offered evidence of the number, race, and sex of students at UTD who had been found guilty of scholastic dishonesty or plagiarism between 1989 and 1992 and the penalty assessed against the students. Beadle's testimony concerning this list revealed that of the fifty-three students found guilty of scholastic dishonesty or plagiarism, all but three of the students decided to admit the facts alleged against them and accept the penalty offered by UTD. None of the students who acknowledged the charges against them were expelled. Of the three students who did not admit the charges, two were expelled, one of which was Ntreh. The other student who was expelled was white.

Davis testified that in her opinion Ntreh was the victim of racial discrimination by UTD. However, on cross examination, Davis testified that, after its investigation, the Department of Education concluded that Ntreh had not been discriminated against based on race. A March 3,

1993 letter by the Department of Education, which was admitted into evidence, stated that Ntreh's "race and sex were not factors in his being charged with plagiarism and expelled from the University."

Having reviewed all of the evidence, including the evidence noted above, we conclude that the trial court's findings of fact eleven through seventeen are not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We overrule Ntreh's fourth issue.

## Conclusion

Having overruled all four of Ntreh's issues, we affirm the judgment of the trial court.

JIM MOSELEY
JUSTICE
Do Not Publish
Tex. R. App. P. 47

[SEAL] **THE SUPREME COURT OF TEXAS**
Post Office Box 12248
Austin, Texas 78711 (512) 463-1312

---

January 11, 2001

Mr. Alan B. Rich
Baron & Budd
3102 Oak Lawn Avenue, Suite 1100
Dallas, TX 75247

Mr. Craig Carter
Office of the Attorney General of Texas
General Litigation Division
P. O. Box 12548, Capitol Station
Austin, TX 78711-2548

RE: Case Number 00-1227
Court of Appeals Number: 05-99-01165-CV
Trial Court Number: 93-12099

Style: ABRAHAM NEE NTREH
v.
THE UNIVERSITY OF TEXAS AT DALLAS

Dear Counsel:

Today, the Supreme Court of Texas denied the petition for review in the above styled case.

Sincerely,

John T. Adams, Clerk

by /s/ Gena Pelham
Gena Pelham, Deputy Clerk

cc: Ms. Lisa Matz, Clerk
Mr. Jim Hamlin

---

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and

Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.